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Department of Labour, Canada
HON. PETER HEENAN — — MINISTER OF LABOUR

COMBINES INVESTIGATION ACT, 1923

INVESTIGATION INTO THE
**PROPRIETARY ARTICLES
TRADE ASSOCIATION**

AN ALLEGED COMBINE OF WHOLESALE
AND RETAIL DRUGGISTS AND MANU-
FACTURERS, ESTABLISHED TO FIX AND
MAINTAIN RESALE PRICES OF PROPRIE-
TARY MEDICINES AND TOILET ARTICLES

Report of Commissioner

October 24, 1927

OTTAWA: F. A. ACLAND, Printer to the King's Most Excellent Majesty, 1927

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Department of Labour, Canada
HON. PETER HEENAN — — MINISTER OF LABOUR

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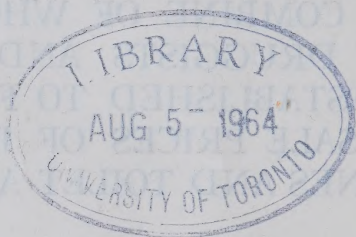
Report of Commissioner

October 24, 1927

Department of Labour, Canada
HON. PETER HENNA — Minister of Labour

COMMERCE INVESTIGATION ACT, 1923

INVESTIGATION INTO THE
PROPRIETARY ARTICLES
TRADE ASSOCIATION



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Report of Commissioner

October 24, 1937

OTTAWA, October 26, 1927.

The Hon. PETER HEENAN,
Minister of Labour,
Ottawa.

SIR,—I have the honour to transmit herewith the report of Mr. L. V. O'Connor, Commissioner appointed under the Combines Investigation Act, 1923, to investigate the Proprietary Articles Trade Association, an alleged combine of wholesale and retail druggists and manufacturers, established to fix and maintain resale prices of proprietary medicines and toilet articles.

I have the honour to be, sir,
Your obedient servant,

F. A. MCGREGOR,
Registrar, Combines Investigation Act.

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LINDSAY, ONT., October 24, 1927

F. A. MCGREGOR, Esq.,
Registrar, Combines Investigation Act,
Department of Labour,
Ottawa, Canada

SIR,—As commissioner appointed under section 10 of the Combines Investigation Act, 1923, to investigate the Proprietary Articles Trade Association, and the business in Canada of the members of the association, being manufacturers, wholesalers and retailers, and any other persons who are or who are believed to be members of the said association, or party or privy thereto, I herewith beg to tender my report.

FORMATION OF THE PROPRIETARY ARTICLES TRADE ASSOCIATION

The Proprietary Articles Trade Association is an organization made up of a number of manufacturers, wholesalers and retailers engaged in the drug business in Canada who handle proprietary branded articles commonly known as patent medicines and toilet articles. The declared purpose of the Association is primarily the protection of the mutual interests of the said three branches of the trade.

This association largely follows the principles of an organization of similar name which has been in existence in Great Britain since January 29, 1896. The British Association was fathered by the late Sir William Glyn-Jones, and has carried on largely under the guidance of Sir William up to the date of his death, which event occurred but a few weeks ago.

Many engaged in the drug trade in Canada have for years felt the necessity of adopting some means which would overcome the extreme cutting of prices. They contended that price-cutting, particularly that of a predatory nature, was gradually bringing chaos to the drug trade, and they felt it was vital that a reasonable price maintenance system should be adopted. Communication was had with Sir William Glyn-Jones, both by personal interview and by correspondence, and at the urgent request of certain gentlemen engaged in the trade Sir William arrived in Canada, in the spring of the year 1925. Meetings of members of the drug trade were held in practically all the large cities throughout Canada, when addresses were delivered by Sir William, and the principles of the association as operating in Great Britain were explained. These meetings are said to have clearly indicated that there was an overwhelming demand for the establishment in Canada of an organization such as the Proprietary Articles Trade Association in England, and under the guidance of Sir William a meeting for the formation of such an association was called. This meeting was held at the city of Montreal on May 28, 1925, and was a joint meeting of representatives of the manufacturing, wholesale and retail druggists of Canada. On that occasion there were presented over 2,000 cards signed by retail druggists requesting that some such organization as the Proprietary Articles Trade Association in Great Britain should be founded. It was resolved that "the establishment in Canada of an organization to secure, primarily, an irreducible selling price on proprietary articles, to the consumer, and as a corollary, a fixed minimum price when selling to the retailer, is desirable in the interests of the public, the manufacturer, the wholesaler and the retailer." It was further resolved "that steps be now taken to form an organization upon the lines upon which the Proprietary Articles Trade Association of Great Britain is conducted."

A Provisional Committee, "to organize an association for the prevention of price-cutting in Canada of proprietary articles," was appointed, and in the month of December, 1925, this committee issued a bulletin, reporting in part as follows:—

- (1) That an organization such as proposed is legal.
- (2) That 2,732 retail druggists, out of the total of 3,195, had applied for membership and paid their subscriptions.
- (3) That the rules and constitution of the proposed association had been drafted, and the form of application to be signed by the manufacturers had been prepared.
- (4) That Sir William Glyn-Jones had consented to take charge of the organization and the operation of the proposed association.

On February 16, 1926, a statement was issued by the Provisional Committee upon the legal aspect of the proposed organization to the effect that:

- (1) A combination to secure reasonable profits for the distributors of proprietary articles did not constitute, in itself, an infringement of any law of Canada.
- (2) That whether or not the operations of the association would constitute an offence under the Criminal Code of Canada would depend upon the facts to be decided by the circumstances of each case.
- (3) That an offence under the Combines Investigation Act would only arise on proof that the association operated "to the detriment of, or against the interests of, the public, whether consumers, producers or others." The committee gives as its opinion that the association has nothing to fear from an investigation under the Combines Investigation Act, as it is its intention to so conduct the affairs of the association and to arrange such prices as will enable them to show, as was the case in the inquiry in Great Britain, that, so far from acting detrimentally to the interests of the public, they were just the reverse.

A meeting of representatives of the three sections of the trade was held at Montreal on March 15, 1926. The reports of the Provisional Committee were read and adopted.

The following officers were elected:—

President—Leo G. Ryan (Wingate Chemical Company, Montreal).

Chairman of Council—Sir William S. Glyn-Jones.

Treasurer—Arthur Lyman (Lyman's, Limited, Montreal).

Vice-Presidents—

Manufacturers' Section:

W. J. Fraser (Northrop, Lyman and Company, Limited, Toronto).

Wholesalers' Section:

C. W. Tinling (National Drug and Chemical Company of Canada, Limited, Montreal).

Retailers' Section:

G. A. Lapointe, Montreal.

Executive Committee—

The above officers and the following:—

Manufacturers' Section:

F. A. Blair (The Centaur Company).

W. G. M. Shepherd (Colgate and Company, Limited, Montreal).

W. M. Grant (Parke-Davis Company, Walkerville).

Wholesalers' Section:

W. A. Hargreaves (Drug Trading Company, Limited, Toronto).

J. A. M. Charbonneau (Casgrain and Charbonneau, Limited, Montreal).

W. G. Noble (Lyman Brothers and Company, Limited, Toronto).

Retailers' Section:

C. G. Whebbby, Toronto.

E. Vadboncoeur, Montreal.

E. A. Rea, Woodstock.

The following constitution and rules were adopted:—

1. The association shall be called the Proprietary Articles Trade Association.
2. The objects of the association shall be:—
 - (a) The discussion of matters of common interest to the branches of the trades represented, with a view to decision, and, if necessary, co-operation.

- (b) The taking of such steps as the association may be advised are legal and not detrimental to the interests of the public, whether consumers, producers or others, to deal with unreasonable and unfair cutting of prices and to give advice and render assistance to its members in preventing substitution.
- (c) The doing of such other things as are lawful, and as may appear to be of benefit to the trade and not detrimental to the public interest.

3. The association shall consist of manufacturers and wholesale and retail vendors of proprietary articles who give evidence of their being in sympathy with the objects of the association.

4. The affairs of the association shall be under the entire management and control of a council consisting of the following:—

- (a) All members of the Manufacturers' Section.
- (b) All members of the Wholesale Section.
- (c) One retail representative from each of the following provinces, namely, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island; two representatives from Quebec and three from Ontario. These may elect additional members to their section up to the number of three.

5. That the election of members of each section of the council shall take place annually.

6. No resolution of the council shall be deemed to be carried and no rule or regulation of the association become operative unless it has first received the approval of the majority of each section.

7. The three sections of the council shall constitute three committees to whom matters particularly affecting their branches of the trade shall be referred, but any decision arrived at by such committees to be subject to the ratification of the council.

8. The meetings of the council shall be held at such times and places as the council may direct, but at least one meeting of the council shall be held in each year.

9. In order to facilitate the handling of the business of the association, the council may delegate its authority to an Executive Committee consisting of the president, chairman of the council, treasurer, three vice-presidents, one to be nominated by each section of the association, namely, manufacturers, wholesalers and retailers, and of three members of each section of the council, such members to be elected by their respective sections.

10. The council is authorized to make rules and regulations for its own government and the government of the Executive Committee and likewise that of the association, and to annul or alter the same from time to time as occasion may require.

11. The council shall be empowered to elect the officers of the association and to decide what shall constitute the various duties, privileges and emoluments in connection with such offices. The officers shall retire from office each year, and shall be eligible for re-election.

12. The following shall be the annual subscriptions to the association:—

Owners of proprietary articles—\$100 for the first article listed and \$3 for each additional article.

Wholesale vendors—\$200 per year for each store operated by them.

Retail vendors—\$5 per year for each store operated by them.

Each member to be entitled to one vote for each subscription paid, but no member shall be entitled to vote or hold office unless the subscription is paid.

The subscriptions run for twelve months from date of payment.

The following resolutions were also passed at the above organization meeting of March 15, 1926:—

To recommend to manufacturers that where articles have been so severely cut that a sudden advance from the cut price to the advertised price would be inexpedient, the minimum retail price shall be somewhat lower than the advertised price.

That the listing of P.A.T.A. articles appearing in the current lists of well-known mail-order houses be postponed to a date (August) to coincide with the issues of the catalogues of such mail-order houses in which the prices shall have been adjusted to correspond with the P.A.T.A. prices.

That, as the object of the association is to secure for manufacturers unfettered distribution to the public through trade channels, the council pledges itself to discourage unfair practices on the part of any trader in connection with such articles as are on the association's list and to take such similar steps as they are advised are legal to prevent supplies reaching any trader who attempts, when a P.A.T.A. article is asked for, to induce the customer to take a substitute, as they do in the case of the trader who sells below the P.A.T.A. prices.

Where a manufacturer abroad has established a branch or appointed an agent in Canada for the purpose of handling an article specially put up for the Canadian market,

which article has been placed on the association's protected list, the association shall take such steps as their lawyer may advise are legal in giving to the manufacturer and his agent assistance in preventing that manufacturer's article from being sold unless in the package specially adopted for the Canadian market.

In the event of any question arising as to the legality of the association or its operations and of legal proceedings being taken against any member of the association on account of his membership of the association, or of any act essential to the carrying out of any rule or resolution of the association which he may have committed (the rules or resolutions being such as the association's lawyer has advised are legal), the association shall take charge of the case and assume costs up to the limit of the association's funds. Furthermore, in the event of the association not possessing sufficient funds for the purpose of defending any such case as is referred to in the foregoing resolution, the council shall make a levy upon every member of the association.

On a report by Mr. Crowder that at a conference of manufacturers, wholesalers and retailers in the grocery trade, covering the Dominion, held in Toronto on March 9, a resolution was passed that they were ready to support the P.A.T.A. movement, and asking that this organization might reciprocate their sentiments as far as their organization was concerned, it was resolved that the grocers' conference be thanked for their resolution and informed that this organization would be glad at all times to co-operate with them in appropriate and legal methods of dealing with the mischief of extreme cutting.

In regard to the question of the giving of bonuses and window displays, a resolution was carried providing that "the Executive be instructed to deal with these matters on the same lines as they are dealt with in Great Britain, or as nearly so as possible."

Concerning standard rates of profits, it was resolved that "each article be dealt with by the Executive Committee on its merits in the light of the special circumstances attached to it."

A meeting of the Executive Committee of the Association was held at Montreal on March 16, 1926. A list of the minimum resale prices as suggested by the manufacturers was considered and adopted.

FORMS OF APPLICATION FOR MEMBERSHIP

The following forms of application for membership were adopted:—

Manufacturers

1. Please enroll me/us as a member of the said association, for which I/we enclose remittance of \$100.
2. I/we agree not to sell any of the articles manufactured by me/us enjoying the protection of the association at prices other than those definitely quoted on the association's list, or accepted by the council of the association.
3. I/we agree not to supply any articles upon the association's list to any person, firm, society or corporation named by the council of the said association as either:—
 - (1) Selling any proprietary article enjoying the protection of the association below the stated minimum fair and reasonable prices or allowing a bonus or dividend on the sales, thereby reducing the prices charged below the said stated fair and reasonable prices, or,
 - (2) Supplying to any one who sells at less than such stated fair and reasonable prices.
 I/we further agree to state on my/our invoices such reselling conditions.

Wholesalers

1. Please enroll me/us as a member of the new organization, for which I/we enclose remittance of the value of \$, namely, \$200 for each of the stores owned by me/us. (If more than one store, please give the addresses of each store on the back of this form.)
2. I/we agree not to sell any article on the list of the association below the minimum prices (ex-warehouse) to be fixed by the manufacturer with the approval of the association. I/we agree that the giving of any discount, rebate, bonus or concession, in cash or kind off the above prices, either at the time of sale or subsequently shall be treated as an infringement of the rules of the association.
3. I/we agree to withhold supplies of all the goods so protected from any person, firm or society named by the secretary of the said association as selling any of them below the stated prices, or allowing bonus or dividend on sales, thereby reducing the prices charged below the protected minimum, or in any other way attempting to injure the sales of any of them.

4. I/we understand that any breach of this agreement will involve the withholding from me/us all supplies of all articles protected through the agency of the said association.

5. I/we agree that when asked for an article on the list of the association, I/we will not make any attempt to sell any other article in its place.

Retailers

Please enroll me as a member of the new organization, for which I enclose a remittance of the value of ——— dollars, namely, \$5 for each of the stores owned by me. (If more than one store, please give addresses of each store on the back of this form.)

I agree not to sell any article on the list of the association below the minimum prices to be fixed by the manufacturer with the approval of the association.

I agree that when asked for an article on the list of the association I will not make any attempt to sell any other article in its place.

RATES OF PROFIT

At a meeting of the Council held on August 10, 1926, the following conclusions were arrived at with relation to rates of profit:—

(a) That in placing new articles on the market, as a general rule the advertised price and the minimum retail price should be the same, and that the maker's bottom terms should generally be fixed so that the spread would permit of the retailer making a profit of $33\frac{1}{3}$ per cent on the selling price, and the jobber making a profit of $16\frac{2}{3}$ per cent when the retailer purchased in small quantities.

(b) That where established articles had been seriously cut, the establishment of a price lower than the advertised price, as a minimum retail price, should be recognized, and in such cases when the spread between the manufacturer's bottom terms and the minimum retail was insufficient to enable the retailer to make $33\frac{1}{3}$ per cent and the jobber $16\frac{2}{3}$ per cent on selling price, the spread should be divided equitably between wholesaler and retailer.

(c) That where the retailer purchased in shelf parcels a system of quantity discounts, to be given by the jobber from his $16\frac{2}{3}$ per cent profit to the retailer, should, where possible, be arranged as follows:—

1 doz.—less 2 per cent.	3 doz.—less 3 per cent.
6 doz.—less 5 per cent.	12 doz. or over—less 6 per cent.

The above terms being on the assumption that freight would be paid to the jobber, and that the sales tax is paid by the manufacturer. Where this was not the case, the above terms would require readjustment.

(d) Whilst it was recognized that it was neither feasible nor desirable that all manufacturers should adopt in detail uniform terms, it was decided to recommend, for the favourable consideration of manufacturers, the adoption of the foregoing suggestions.

It was reported that at an Executive meeting held on July 28, 1926, the following conclusions were arrived at, with relation to resale prices:—

It being the responsibility of each manufacturer for himself to fix his reselling prices, the committee, beyond giving information and advice, could take not responsibility for these prices. The prices being fixed by the manufacturer, the committee have been solely concerned with attempting to secure that that portion of the prices paid by the public for the articles which the manufacturer allotted to the wholesale and retail distributors should provide a reasonable remuneration for the services they render in the distribution of the article.

It was decided not to insist that articles included in the association's list should show any uniform standard rates of profit, but that the list should include the articles the proprietors of which recognized the principle of fixing prices which could be charged knowing that the seller could not be undersold.

It would be noticed that this large body of manufacturers carry on their business in various ways, the types of articles differing and the terms necessarily varying. The committee realized that, when all types of business are considered, the terms will not meet with universal approval, and it must not be implied that in every case they represent the best the committee are hopeful of securing ultimately. Where improvement can be made, the committee will carry on negotiations with manufacturers in the hope of securing those improvements for inclusion in the first revision of the list.

The first concern of your committee has been to get the plan started and the trade must realize that the deplorable state of things which it has taken a generation to produce cannot be completely rectified in the course of a few weeks.

At a meeting of the Executive Committee held on September 22, 1926, it was reported that a defence fund of \$100,000 was being formed "for the purpose of meeting special expenses connected with litigation or legislation."

The price list as adopted by the Association went into effect as of the 28th of August, 1926.

At the said meeting of the council held on August 10, 1926, it was further decided "that the giving of any discount, rebate, bonus or concession, in cash or in kind, off the list price, either at the time of the sale or subsequently, be treated as a case of selling below the minimum price."

It was further decided that the price list as submitted be adopted "upon the understanding that, where the terms were unsatisfactory, the Executive will continue their efforts to improve them and that at the next issue, or subsequent issues of the list, each section of the council shall have the right to require the removal from the list of any article upon which, after due negotiation, satisfactory terms cannot be secured."

The association as finally established was composed of 157 manufacturers, 28 wholesale druggists, and 2,732 retail druggists.

PROCEEDINGS OF COMMISSION

The commission opened its hearings at the city of Montreal on January 7, 1927, and the same was brought to a conclusion at Lindsay, Ont., on June 11, 1927. Mr. A. R. McMaster, K.C., Montreal, was appointed by the Minister of Justice as counsel to conduct the investigation, and the association was represented by the late Sir William Glyn-Jones, and by Messrs. J. C. McRuer, Toronto, F. S. Mearns, Toronto, and Alex. Cinq-Mars, K.C., Montreal. Mr. A. R. MacDougall, of Toronto, attended on the argument as assistant to Mr. McRuer. Mr. Harry Hereford, industrial engineer of Montreal, also attended the various sessions of the commission in aid of the association.

Sittings were held at Montreal, Toronto and Winnipeg, and evidence was given by witnesses representing the drug trade in the various parts of the Dominion.

The inquiry was thorough, counsel conducting the investigation and those supporting the association expressing themselves as satisfied that all possible evidence pertaining to the trade in Canada had been adduced.

The hearing, including argument, occupied 51 days; the evidence comprised 5,458 typewritten pages. There were also placed on file by counsel for the inquiry 152 documentary exhibits, whilst counsel for the association filed some 75 exhibits.

Evidence was given by five officers of the association, twelve manufacturers, nine wholesalers, forty-six retailers, three travellers, one editor, one economist, three farmers associated with co-operative societies in Western Canada, one workingman and two members of the Legislature for Manitoba who were also members of the Independent Labour Party in that province. The commission also had the assistance of Messrs. McDonald, Currie and Company, chartered accountants of Montreal, who made a searching investigation into the business of several members of the trade.

SURVEY OF THE TRADE

The character of the drug trade has changed very materially during the past thirty years. Prior to that time there were comparatively few proprietary articles of a medicinal nature. Drugs and other medicinal products were supplied to the druggist by the manufacturer and the wholesaler, but particularly through the agency of the wholesaler, and the retailer in turn manufactured goods to meet the requirements of the public. The retailer was essentially a professional man and played a very important part in the life of the community. Such a man has been referred to by various witnesses in the course of the investigation as the "ethical druggist." It is true that the retail druggist of that period carried side lines, such as paints, oils and seeds, but these lines were generally considered to be such as should be handled by a man who, by his course of study and practice, was able to determine the nature, quality and purity of the article, all to the benefit of the consumer.

The retail druggist of the period above mentioned was apparently content in the practice of his profession. To be successful he not only had to do his work thoroughly, but he was obliged to continue his study, exercising his inventive genius. Thus incidentally he not only gathered unto himself a large personal following, but by reason of his being able to manufacture he acquired a very reasonable and, in some cases, a handsome remuneration. Not only was the retail druggist of the period above referred to a distributor; he was to a very large extent a manufacturer.

About thirty years ago the department store made its appearance. Whether or not this class of store was at that time enabled to supply the consumer with goods at a lower mark-up than the ordinary retail merchant, the fact seems to be that the department store commenced the practice of cutting prices in proprietary articles. The Government also removed the excise tax from alcohol required by manufacturers of medicinal preparations, but no such concession was extended to the retail druggist. In consequence, manufacturers not only increased in number but their business expanded, and by means of mass production, the putting up of their products in very attractive form, and by advertising their products lavishly, not only created in the public a desire to purchase these manufactured articles, but led the public to prefer such products, with the result that the retail druggist practically ceased to manufacture, and, as far as proprietary articles were concerned, to a very large extent ceased to practise his profession.

For the reasons above mentioned, and due to the cutting of prices in proprietary articles, the character of the business of the retail druggist changed very materially. He found that the professional side of his business was largely restricted to the filling of prescriptions, and in a great many communities it was found that the medical profession made up most of their own medicines, or purchased the same direct from the manufacturer and the wholesaler, with the result that the retail druggist found himself compelled to develop the merchandising side of his business. The profits thus derived not being as great as formerly, and the practice of price cutting tending to further reduce profits, the retail druggist was compelled to reach out into other lines, and we find at the present day druggists handling such articles as candy, kodak supplies, stationery, tobacco, ice cream and soda water, operating lunch counters, and, indeed, instances have been cited where the retail druggist has sold butter, silk stockings, dolls, balloons and even funeral wreaths. One witness aptly characterized the modern drug store as "a regular bazaar."

The merchandising side of the retail druggist having been developed, the natural result was that the personal touch of the ethical drug store largely disappeared, and it was succeeded by keen competition in the distribution of pro-

prietary medicines and toilet articles. The department store, inaugurating a policy of distributing its goods to the consumer at a price lower than that ordinarily prevailing, gave the lead to the retail trade. The druggists in larger centres found it necessary, in order to hold their trade, to meet the cut price of the department store, and, as the mail order branch of the department stores developed a somewhat similar policy of lower prices, the retail druggist in the smaller centres and outlying districts also found it necessary to reduce prices. The development of the chain stores further aggravated the situation, and in the year 1924 many of those engaged in the drug trade came to the conclusion that some steps must be taken to meet this system of price competition.

PRICE-CUTTING

Price-cutting means the distributing to the customer of certain goods at a price lower than that fixed or suggested by the manufacturer, or at a price lower than that established by custom. The price so fixed, suggested or established, may be assumed to be a reasonable and fair price, there being no combination amongst manufacturers and the trade being governed by competition. The distributor, however, desiring to enlarge his trade advises the public that he is selling certain articles at a price lower than the fixed or established price. His object primarily is to attract people to his place of business, hoping that by doing so he will not only increase the volume of his business in the articles advertised, but will make sales of other articles in many of which there will be a substantial profit; he expects also to gain the favour of many people who otherwise would not deal with him, and thus permanently establish a prosperous business.

The history of cutting prices, however, would indicate that the cutter cannot acquire the field for himself. His competitor not only puts his prices down to the same figure but very often will go still lower, and in a great many cases the war proceeds until many articles are cut to the bone, and the cutter not only does not secure any reward for the distribution of the articles so cut but very often sells these articles at a price lower than they actually cost him. It cannot be contended that such a principle of merchandising is sound. Every merchant must keep in mind his overhead, and whilst it might not be unwise to reduce the sale price of certain articles at various times for the purpose of attracting trade and thus increasing the turn-over, in other words, making certain reductions in the sale price of articles for the purpose of advertising, the merchant cannot be honest with himself or with the public in distributing the articles in question at a price that will mean a loss to himself. Extreme or predatory cutting is certainly an evil. It gives a false impression to the public at large. It would be quite out of the question for any merchant to continue to cut certain specific articles. He necessarily changes his price from time to time and makes selections of different articles to carry into effect his price-cutting program. The result is that the customer of to-day who feels that he has secured a bargain and that he is purchasing goods from a merchant who sells to him at a low price often finds that to-morrow he must pay an increased price, or that the druggist in his own immediate neighbourhood is charging him a very much greater price than the cut-rater. The consequence may be that the customer in question will lose confidence not only in the neighbourhood druggist but in the cut-rater.

Price-cutting is put into effect mainly on articles which are well known to the consuming public. These articles have become established in public favour through merit or by reason of a value which has been established in the mind of the public through advertising. The manufacturer has a right to expect that the public should pay for his product whatever price is reasonable,

regard being had to varying geographical and merchandising conditions. The cut-rater, however, seizes upon these articles as his bait to attract the public. He advertises that he is selling these goods for a sum considerably less than that which the public is willing to pay, with the result that the public may question the merit and value of the articles concerned, or the retailer, speaking generally, finding that he is receiving insufficient reward for his handling of these articles, may cease to carry the same.

Another evil alleged to result from price-cutting is that the retailer, in order to make a profit, will not only discourage the public in the purchase of articles that are cut, but will endeavour to persuade the customer to purchase other goods, possibly of an inferior quality, and by force of circumstances may be tempted to supply the public with adulterated goods, and even go so far as to break the law.

Predatory cutting is to be found mostly in the business centres of large cities and in those districts where branches of a chain store have been established. The large department store and the chain stores, being strong financially, at times carry the cut-rate principle to the extreme. The policy of some of these stores has been expressed to be "to meet and beat any competition" and "to meet any price."

There has been filed an advertisement of a certain chain store informing the public that for certain dates a large number of P.A.T.A. goods would be placed on sale at prices ranging from one cent above the regular wholesale price of the goods to the actual wholesale price, or indeed a cent below the same. There was also filed an advertisement of another system of chain stores advertising a sale of the self-same articles for the same dates at a price one to three cents below the prices advertised by the rival chain. It must be conceded that this practice is not merchandising, but is competition gone mad. It has been contended that the customer is entitled to obtain his requirements at the very lowest price possible, even at a price which will represent a distinct loss to the distributor. Sound merchandising, however, will not support any such theory, and the consumer himself will be found ready and willing to pay a price that will represent the fair and reasonable value of the article, including some reasonable sum by way of remuneration to the distributor. There is, of course, no one uniform price which can be regarded as fair and reasonable. With operating costs varying from 18 per cent to 30 per cent, it is obvious that what is a reasonable return to the man whose costs are at the maximum are unreasonably high for the man at the other extreme.

Cutting of prices has not been restricted to the retail trade. Competition amongst the wholesalers was very keen. This was due partly to the fact that a number of individuals carried on wholesale business in certain lines with practically no overhead. They simply had an office and a small ware-room, or indeed often did business without a ware-room, and the office was to be found in the residence of the party in question. Goods were procured as required from the manufacturer, and then distributed to the retailer at a price much less than that established by the regular wholesaler. This led to the latter finding it necessary to lower prices to meet competition, and discounts to the retailers were increased by from five to ten and even twelve per cent.

It has been shown that many distributors are able to carry on business at a very handsome profit on a margin considerably less than that required by the wholesaler or the retailer who is not financially strong. The large department store and the large chain store, by reason of their financial strength, were able to purchase their goods direct from the manufacturer, and in quan-

tities that entitled them to secure the same at a very low price. These institutions were thus enabled to take unto themselves, not only that part of the price of the article which the ordinary retailer would consider his just reward, but also that portion of the price which in the regular course of business would have gone to the wholesaler. It has been shown too that a number of retail druggists were able to take advantage of large quantity discounts, and in this way secure to themselves increased remuneration. This was also accomplished quite frequently by a number of retail druggists clubbing together and purchasing goods direct from the manufacturer and in comparatively large quantities and then distributing the goods as agreed upon amongst the members of the club. Another system has been adopted by certain members of the retail trade whereby they themselves have established a wholesale business which, by eliminating travellers and advertising and curtailing credit service, tends to reduce overhead to a comparatively small amount. The profits so derived are distributed to the various shareholders, according to their holdings and the amounts of their purchases. By these several methods many of the retail trade felt that the margin of profit which they were able to acquire for the distribution of certain proprietary articles was more than sufficient, and concluded that it would be to their advantage in the development of their business to pass to the consumer some reasonable portion of their profit.

The general policy of mark-up in the department store appears to be to set the price at a point somewhat lower than that prevailing in the trade generally. There is no question but that the trade of the department store in proprietary articles has developed and expanded to a surprising degree. It has also been shown that the wide-awake, progressive retail druggist, who has behind him sufficient financial strength to purchase his goods to the very best advantage and who is able to distribute the same at a price somewhat lower than that of the ordinary retailer, is able to reap a very handsome return. It is therefore contended that the cutting of prices in an honest and judicious way is not only to the advantage of the public, but is a principle of merchandising which should not be lightly interfered with; it also brings prosperity to the active, energetic and progressive retail druggist. Evidence has also been given that many manufacturers do not take exception to price cutting. Some of them contend that cutting is not harmful from the standpoint of the manufacturer as it tends to increase the volume of the turn-over, all to the manufacturer's advantage.

In any event, as said above, a great many of the drug trade concluded that the condition of the trade had become desperate, and that many of the wholesalers and retailers were bordering upon bankruptcy. In endeavouring to secure a solution for that state of affairs, the principles of the P.A.T.A. as operating in Great Britain were studied and eventually put into operation.

THE COMBINES INVESTIGATION ACT

The Combines Investigation Act, 1923, defines the word "combine" as follows:—

The expression "combine" in this Act shall be deemed to have reference to such combines immediately hereinafter defined as have operated or are likely to operate to the detriment of or against the interest of the public, whether consumers, producers or others; and, limited as aforesaid, the expression as used in this Act shall be deemed to include (1) mergers, trusts and monopolies so called, and (2) the relation resulting from the purchase, lease or other acquisition by any person of any control over or interest in the whole or part of the business of any other person, and (3) any actual or tacit contract, agreement, arrangement or combination which has or is designed to have the effect of (i) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing; or (ii) preventing, limiting or lessening manufacture or production; or (iii) fixing a common

price or a resale price or a common rental, or a common cost of storage or transportation; or (iv) enhancing the price, rental or cost of article, rental storage or transportation; or (v) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply; or (vi) otherwise restraining or injuring trade or commerce.

OPERATION OF P.A.T.A. AND THE GENERAL CONDITION OF THE TRADE

There can be no question but that the P.A.T.A. is a combination. This is clearly indicated by a perusal of its constitution, the agreements which its members are required to sign, and its declared policy as hereinbefore set forth. The question to determine is whether or not this Association has operated or is likely to operate to the detriment of or against the interest of the public, whether consumers, producers, or others. According to the evidence, there are now some six hundred articles on the P.A.T.A. list. In Great Britain the list includes about six thousand articles and comprises eighty per cent of the branded articles found in the drug trade. It has been declared that the development of the P.A.T.A. in Canada has been restrained pending the outcome of this investigation. It is stated that there are more proprietary articles on sale in Canada in proportion to general merchandise than there are in Great Britain, and consequently, eventually there should be more articles on the list in Canada than we find on the association's list in Great Britain.

It has been further stated that the association in Canada anticipates including in its membership the 300 manufacturers of nationally advertised articles who have not yet joined. From this it is quite patent that, if the association is sustained, the trade in such proprietary and toilet articles of a branded character will be largely under the control of the association. In answer to this it is pointed out that there are many lines of branded articles in the drug trade that will not be found on the association's list, as the declared object of the manufacturer and distributor of these articles is to place them in the hands of the retail trade in such a way that the latter will be able not only to sell them in competition with articles on the Association's list, but will be encouraged to push their sale, by reason of the fact that the margin allowed to the distributor is considerably in excess of that prevailing in the case of P.A.T.A. goods. The articles referred to are those commonly known under the names of "Rexall," "Nyal," "Nadruco," "Nalco" and "Penslar." The plan usually adopted by the firms placing these articles on the market is to appoint representatives of the retail drug trade in certain specific territory, giving them the sole right to handle the goods in question in that particular territory. There are no travellers, practically no advertising and goods are laid down to the retail druggist in such a way as to assure him very substantial profit.

Articles which are said to be available for the P.A.T.A. list are those which are put up by the manufacturer for distribution to the consumer primarily through the ordinary channels of the drug trade, namely, the wholesaler and the retailer. Many of these goods have been in common use for many years and have acquired public favour by reason of their merit, while still many others have been well received and, in fact, met with the demand of the public, due to the fact that they are introduced through the medium of the active co-operation of the retail druggist or through the medium of advertising. To sustain these latter articles in the drug trade the manufacturer is compelled to employ travellers, to circularize the members of the drug trade, to offer bonuses for window and counter display and to give other inducements, such as quantity discounts.

It is said that the P.A.T.A. in Canada will control only proprietary articles of a nationally advertised character. It is argued that this must necessarily be the fact as articles which are not established in the public favour are not subjected to price cutting, and therefore do not require the protection of the Association.

The three sections of the Association, namely, the manufacturer, wholesaler and retailer, combine for their mutual protection, but the Association disclaims any intent to fix prices or to control the manufacturer in the matter of trade discounts. The Association claims that its sole object is to secure for the wholesaler and the retailer a fair and reasonable reward for the distribution of the products of the manufacturer, and it proposes to assure that reward by binding its members to refuse to supply goods to all those in the trade who may sell any goods on the list of the Association at a price lower than the minimum resale price fixed by the Association. Any member of the trade who passes to his customer any article on the Association's list at a price lower than the minimum price fixed by the Association will, unless a satisfactory explanation be forthcoming and unless an assurance be given that such an offence will not again occur, be placed on the stop-list, and the result will be that that member shall thereafter be absolutely precluded from securing supplies of any of the other six hundred articles on the Association's list. As will also be noted by perusing the agreements adopted by the Association, the giving of any bonus or concession in cash or in kind off the sale price of any article on the Association's list shall be construed as a sale below the minimum price fixed by the Association, and therefore a breach of the agreement.

The Association disclaims that the establishment of fixed spreads as a reward for the distributor in any way amounts to a fixing of the resale price. It contends that the manufacturer alone has the right, and does fix his resale price, and, further, that the consumer is protected in the matter of price by the fact that the manufacturer will not only, in his own interests, endeavour to place the resale price at as low a point as possible, thus obtaining the favour of the consumer, but that he is restrained in the fixing of his price by the competition of other manufacturers in the same line.

The Association, however, does assume to take full control over the matter of the spread allowed for distribution and assumes the power to reject articles of a manufacturer desiring to place them on the list unless that manufacturer fixes his resale price in such a way as to allow to the distributor the margin that the Association may fix. If the Association feels that the spread allowed to the wholesaler and retailer on the article in question is not sufficient, it will insist upon the resale price being increased so as to give the necessary spread, or that the manufacturer reduce his sale price to the distributor, thus creating the necessary spread. If the manufacturer refuses to comply with the direction of the Association, the article proposed to be placed on the list is rejected. The Association, however, does not attempt to interfere with the resale price fixed by the manufacturer where that resale price will give the distributor a reward in excess of that required by the Association. In this connection it is declared that, if a manufacturer allowed an unreasonably large spread, the Association would say: "We cannot have it on our list."

(1) MINIMUM PRICE

In the P.A.T.A. price list articles are quoted on the basis of their regularly advertised prices and on a minimum fixed resale price. The advertised price and the minimum price in a great many cases are identical, but in many other instances the minimum price is lower than the advertised price.

The reason for listing two prices is set forth in Resolution No. 3, passed at an organization meeting of the Association on the 15th day of March, 1926. This resolution reads as follows: "To recommend to manufacturers that, where articles have been so severely cut that a sudden advance from the cut price to the advertised price would be inexpedient, the minimum retail price should be something lower than the advertised price." The explanation given for this resolution is that, where over a course of years a cut has become so severe that it has taken years to get to that stage, it is inexpedient in the manufacturer's interest and unfair to him to ask him at the outset to redeem the position to the extent of allowing the profit which he originally intended the distributor to take.

There seems to be quite a wide difference of opinion in the trade as to the desirability or fairness of adopting this dual system of price listing. In support of the principle it is pointed out that most tobacco lines are handled on a minimum price basis, and it is further argued that it is in the interests of the retailer to be given some slight leeway in the matter of setting his price, due to the fact that there has been severe price cutting. On the other hand, the department stores, chain stores and retail stores supported by considerable capital, invariably adopt the minimum resale price and advertise the goods accordingly. The small retail druggist and the druggist who is not strong financially feels that the regular advertised price of the article is not too great a reward for his services, and endeavours to secure that price for his goods. The result is that the customer, having seen these articles advertised at the lower price, feels that the latter price is the one that should prevail, and it is necessary to enter into explanations and there is the bickering and general dissatisfaction which is found in the trade due to price cutting. In any event, it would appear that the distinction between the minimum resale price and the advertised price is but a temporary expedient. It seems quite clear that the intent of the Association is to gradually raise the price.

(2) MARGIN OF PROFIT

The aim of the association in the matter of spread or margin allowed to the distributor is as far as possible to fix the sale price at such a figure as will allow the wholesaler $16\frac{2}{3}$ per cent of his selling price, and will allow the retailer $33\frac{1}{3}$ per cent of his selling price. This will mean an allowance to the wholesaler of 20 per cent on the cost of the goods to him, and an allowance to the retailer of 50 per cent of the cost of the goods to him.

Although it is the declared aim of the association to establish uniform margins, those indicated by the price list are not by any means uniform. It is explained that in the naming of the price each article must be considered by itself, regard being had to the extent to which the article had been subjected to price-cutting.

The spread aimed at by the P.A.T.A. in Great Britain is $12\frac{1}{2}$ per cent on sales for the wholesaler and 25 per cent on sales for the retailer. The great majority of retailers who came before the Commission voiced the opinion that the spread which they were now allowed under the rules of the association was insufficient. It was contended that the average overhead of the retail druggist was about 27 per cent of the turn-over, and that in all fairness the resale price of proprietary articles should allow an average net profit to the retail druggist of about 8 per cent. It is only quite natural to expect that the majority of the members of the retail trade would welcome an increase in the spread allowed to them. Representatives of department stores and chain stores and some druggists of financial strength gave it as their opinion that the spread aimed at by the association and the spread as now prevailing is too high and tends to militate against business.

The price list of the P.A.T.A. as put into force does not represent in general an advance in manufacturers' advertised prices, but in many cases it does represent a real advance on the actual prices at which goods were sold. Thus, the prices named are, of course, higher than the prices that prevailed in many of the department stores and chain stores and in some of the retail stores. At the same time the P.A.T.A. prices are lower than those charged by the retail druggist who has not been obliged to meet price competition. As a matter of fact, several retailers in Western Canada complained that the P.A.T.A. has been the cause of lowering the price. Many of the druggists in that part of the Dominion refuse to follow the minimum price suggested by the association, and some of them ask a price in excess of the advertised price.

The contention of those who advocate an increase in the retail price is that, having in mind the actual cost of doing business, the spread allowed by the association is insufficient. In looking over the business of the retail druggist, however, it is found that, not only is there quite a handsome profit derived from the making up of prescriptions, but that in the sales of some goods manufactured by or for the druggist, and in the sales of many drugs not classed as proprietaries, the profit of the retailer runs from 35 per cent to 150 per cent. There are also many manufactured goods not on the P.A.T.A. list which are handled by the retail druggist at profits ranging from 50 per cent to 75 per cent. It does not seem, therefore, necessary to the life of the retail trade that encouragement should be given to the increase in the price of proprietary articles of a widely advertised kind. There is scarcely a retail druggist who does not carry side lines, many of which have no relation whatever to the drug trade, and the profit which the druggist derives from handling such goods is very considerably under that provided by or aimed at by the association. Many of these side lines bring a gross profit of only 10 per cent or 15 per cent.

It will be noted that the spread aimed at by the association will be enforced as far as possible in regard to new articles coming on the market and in regard to articles which have not been greatly cut. It would no doubt be to the advantage of the manufacturer placing a comparatively new article on the market and having to compete with articles of a somewhat similar kind which are well entrenched in public favour to keep his resale price down to the lowest possible point, and at the same time give to the distributor such a profit as to induce him to push the sale of the article in question. The association would apparently refuse to place that article on the list unless the resale price was fixed in such a way as to allow the wholesaler handling the same a profit of 16½ per cent on the sale price, and the retailer a profit of 33½ per cent on his sale price. It might be that the spreads allowed would have the effect of practically wiping out the manufacturer's profit. As the article in question becomes established it does not seem that the association will make any concession in the way of reducing the spread for the distributor. The only way out for the manufacturer is to raise the price to the consumer, resulting in a detriment to the consumer and quite likely a serious loss in business for the manufacturer.

(3) COERCIVE METHODS OF ASSOCIATION

The association declares that one of its principles is that there is no discrimination practised against any person in the trade. As far as concerns the retail druggist, or the general merchant, the only condition insisted upon is that the merchant in question must sell P.A.T.A. goods at prices not less than those set out on the P.A.T.A. list; it is not necessary that he join the association.

As far as the manufacturer is concerned, whilst nothing appears in the constitution or in the resolutions of the association, there does not seem to be any doubt but that the association purposes to compel the manufacturers to accept

membership. There has been filed a copy of the *Canadian Pharmaceutical Journal*, dated September, 1926, which contains extracts from a speech delivered by Sir William Glyn-Jones at a convention of the Canadian Pharmaceutical Association held at Montreal on August 12, 1926. This address reads in part as follows:—

It is for the retailers to get other manufacturers of branded goods to come into line. They must do this by the preference which they give the P.A.T.A. goods. The protecting manufacturers have a right to receive from the trade the services which, in the shape of guaranteed profits, they are paying for. The non-protecting manufacturers seem to value only the co-operation of the cutters. They should get the co-operation of no other trade. Organized sales resistance to non-P.A.T.A. proprietaries should be the policy of every druggist. This can be made effective without resorting to any illegitimate practice. Travellers are ambassadors to the trade from the firms they represent. It is true, they are not responsible for the policy of those firms. Many of them are your personal friends, but this is a business matter. In this war against cutting, firms who supply, or allow to be supplied, traders who unduly cut the prices of their goods are not even neutrals. They are the allies of the enemy and should be so treated. Their ambassadors should be given their passports. (In international controversies this is the immediate precursor of war.) Such travellers are entitled to courtesy but not to orders, and, until the articles they are trying to interest you in are on the P.A.T.A., they should take back to their firms, not orders, but the reasons why those orders are not forthcoming.

When asked whether or not the above extracts were substantially a correct reproduction of his speech, Sir William replied: "I should think that they are, down to the very stops and commas." When further asked as to whether or not the article was a verbatim report, the reply was: "It almost looks as if I had handed it in."

There is also on file a copy of the issue of *Drug Merchandising* dated June 9, 1925, and containing extracts from an address alleged to have been made by Sir William, and which reads in part as follows:—

The ultimate success of the P.A.T.A. plans depends upon one thing, and that is the ability of the retail druggists to prove by deeds, not words, that the manufacturers who believe that the good-will of the man behind the counter is worth having, and worth paying for in the shape of guaranteed profits, are right. If in your store you handle P.A.T.A. and non-P.A.T.A. proprietaries alike, you deserve all you get in the way of undue price cutting. The organized retail druggists of the Dominion can, if they choose, make the merchandising of non-P.A.T.A. proprietaries unprofitable to the manufacturer. There are perfectly legitimate ways of doing this, and I need not enumerate them. I make no apologies for asking you to make the path of the non-protecting proprietor of a proprietary article as hard as you know how. That should be your contribution to the success of the P.A.T.A.

When asked whether or not the above paragraph faithfully reproduced a statement made on the occasion in question, Sir William's reply was in the affirmative.

It also appears that speeches have been delivered by members of the Association at important conventions of the trade held throughout the province of Ontario, in which it was urged that the retail trade should prefer the preparations of those manufacturers who had aligned themselves with the retailers by joining the Association. One of these speakers admits that these speeches were delivered "at the instigation of Sir William".

It also appears that, whether justified in coming to such a conclusion or not, some manufacturers who in the beginning declined to become members decided that it was desirable that they should join on account of many other manufacturers entering, and "because they feared it would affect the handling and distribution of their goods in this country through drug channels". Obviously it is in the interests of the manufacturers, who are so largely dependent upon the good-will of their distributors, to join an association which so many of the retailers and wholesalers regard as necessary for their own protection.

There is also quite conclusive evidence that members of the Association have actually put into effect these suggestions of Sir William. It has been

shown that the trade of a certain manufacturer has been so materially interfered with that it has been practically cut to pieces, and that by reason of the policy and suggestions above set out fully two-thirds of his customers have been lost. It has been stated that in certain centres the retail trade has been warned of the presence in their midst of a traveller of this particular manufacturer, with the result that the traveller obtained few, if any, orders. Letters have been produced written by former valued customers of the manufacturer in question expressing regret at being unable to patronize him for the reason that he was not a member of the Association.

The only answer to this charge is that the sales resistance adopted by the retail trade in the particular case was largely due to the fact that the manufacturer was a friend of a chain store manager who was conducting a warfare with the Association, and that the retail trade, in a large measure, considered the manufacturer a natural enemy.

There have been also filed a number of issues of the *Canadian Pharmaceutical Journal* containing very strong strictures on many of those outside of the Association. In the issue for March, 1927, the following extract appears:—

Will druggists who have travellers calling on them who knock the P.A.T.A., kindly report to the Journal the name of the traveller and the firm he represents. Those who report to us will not have their names disclosed. The information will be treated as confidential.

It was explained that the object of this item was simply to gain information as to those travellers who are criticizing the Association so that their employers might be notified, but that no further action would be taken.

Further on, the following paragraph is found:—

We strongly urge druggists not to be misled by any of the plausible plans of price maintenance put forward by manufacturers not on the P.A.T.A.

Again, we find the following:—

Firms who went into the P.A.T.A., then pulled out of the P.A.T.A., can't expect much sympathy or support from members of the P.A.T.A.

Sir William disclaimed any responsibility for articles appearing in the *Pharmaceutical Journal*. He admitted that at no time had there been any protest against such articles. He stated that, even as far as concerned his own addresses, the reports disclosed merely his own personal views and opinions and that such statements should not be taken as operating against the Association.

It can scarcely be contended that the policy of the P.A.T.A. in this respect is not in conformity with the expressed views of the organizer and guiding genius of the Association. There does not seem to be any question but that the Association, if given the ear-mark of approval, will bring constraint upon manufacturers and force them to join the Association.

(4) CO-OPERATIVE COMPANIES AND SOCIETIES

It will be noticed that the agreements required by the Association provide that goods shall be withheld from any person, firm or society allowing any bonus or dividend on sales, thus reducing the price below the protected minimum. The object of this provision is apparently to meet the competition set up by co-operative societies or co-operative companies. The co-operative societies feel that such a provision would mean their extinction, as the fundamental principle of co-operation is based upon the distribution of profits to co-operators according to their purchases.

It has been established that the distribution of proprietary articles in the drug trade has been very successfully carried out by companies which in the proper economic sense of the word cannot be called "co-operative," inasmuch as they are organizations of dealers and not of producers or consumers, but these com-

panies have adapted to their use certain co-operative principles, among others the division of profits on a patronage basis. The P.A.T.A. will permit any such company to distribute its profits on P.A.T.A. articles amongst its shareholders on the basis of their purchases of non-P.A.T.A. articles. It is contended on the part of the Association that such a system as this works no injury to the co-operative company as each shareholder will in all likelihood purchase a fair and equitable amount of non-P.A.T.A. articles. It is claimed too that such a system will not work any hardship to the co-operative company as a system of book-keeping could be installed which would effectively carry out the suggestions of the Association.

The co-operative movement plays a part in Nova Scotia, Quebec and Ontario, but is much more extensive in the western provinces of the Dominion. It has not, however, as yet been developed so as to include the sale of proprietary articles to any marked degree. Information regarding the co-operative organizations in Manitoba and Saskatchewan was placed before the Commission. In Manitoba there are some 230 locals or units in the co-operative movement and some of these locals comprise about 250 families. The business carried on is both wholesale and retail and the object is to have goods reach the ultimate consumer at the very lowest possible margin of expense. Proprietary articles are carried simply as an accommodation. The societies do not figure on making anything out of them. Business is mainly carried on in the handling of large bulk products such as coal, wood, sugar and lumber.

In the province of Saskatchewan we find that there is a system somewhat similar to that in operation in Manitoba. There are also some 600 co-operative stores in the province, and, after payment of a fixed dividend on capital invested by the co-operators, the balance of the "savings" are distributed amongst the customers on the basis of their respective purchases. These co-operative societies also handle few, if any, proprietary medicines.

Objection is taken by these societies to the principle of the P.A.T.A. in what they claim is its attempt to interfere with their method of distribution of profits or savings. They fear that, if the principle of the P.A.T.A. in regard to proprietary articles is established, the same will spread to many other branded articles, such as groceries, boots and shoes, hardware and the like, and will be a decided detriment to the people of the middle west who are served by them. It is claimed that it is quite out of the question for these societies to adopt the system proposed by the Association of distributing their savings to their customers on the basis of non-P.A.T.A. articles. It is felt that not only would such a method be inequitable but that it would be impossible to adopt a system of book-keeping that would necessarily be required. What is more, distribution of savings could not be made except periodically, whereas in most cases under the co-operative system the customer receives the benefit of the savings immediately at the time of the purchase. The chief objection of co-operators to such an organization as the P.A.T.A. is, of course, that its underlying principles are directly opposed to the spirit and fundamental principles of co-operation, and the proposal of the Association, while attempting to provide a mechanical device enabling the co-operative societies to carry on, in no way satisfies the true co-operator.

The provision with reference to co-operative societies is similar to that prevailing in Great Britain, but we find that the co-operatives in Great Britain are most strongly entrenched. In the year 1925 there were some 5,000,000 co-operative members in Great Britain, not including Ireland. These societies not only had stores and warehouses, but operated some 100 factories. I find by reference to the official returns for the year 1925 that the net trading surplus available for the payment of dividends was \$116,055,670. It will be seen from this that the co-operative societies in Great Britain are quite able to look after

their patrons without the aid of, indeed in spite of, any opposition of the P.A.T.A. The co-operative societies in Great Britain stock P.A.T.A. goods and conform with the rules and regulations of the Association in so far as these articles are concerned, but the co-operative movement through its large manufacturing and wholesale business is able to supply its retail societies with products similar to many of those on the P.A.T.A. list.

Conditions in Canada, however, are quite different from those found in Great Britain, and it is difficult to see that restrictions such as imposed by the P.A.T.A. in respect of distribution of savings will not work out to the detriment of a very large number of the citizens of Canada, many of whom, residing in far distant and scattered sections, require all the assistance possible to enable them to obtain their goods at the very lowest possible expense.

(5) WHOLESALE HOUSES TO SELL EX-WAREHOUSE

There is a further provision in the agreement provided for the Wholesale Section reading as follows:—

I agree not to sell any article on the list of the Association below the minimum price (ex-warehouse) to be fixed by the manufacturer with the approval of the Association.

Evidence has been given that this provision works not only a hardship but an injustice to many wholesalers. It prevents those who have not branches in various parts of Canada from competing with other wholesale houses, as they are restrained from allowing any concessions in the way of paying freight rates to customers at a distance who are able to obtain the same article from a wholesale house near at hand.

(6) RESTRICTION ON SUBSTITUTION

The resolution of the Association having to do with the prohibition against substitution and which is further embodied in the last clause of the retailer's agreement is said to have been put in effect by way of compensation to the manufacturer of the P.A.T.A. article immediately concerned.

It is also contended that substitution or switching of articles asked for by a customer is a very unwise plan from the standpoint of the retailer, as frequently the customer, having been persuaded to take an article other than the one which he originally desired, is not satisfied with the results obtained, and thereby loses confidence in the seller. One witness took exception to the provision in question, contending that it tended to preclude retail druggists from disposing of their own private preparations. The trade as a whole, however, feels that the restriction on substitution is wise and proper.

(7) RESTRICTION ON CLUB BUYING

Another restriction imposed on the trade by the P.A.T.A. is that against club buying. Many retailers who individually are not sufficiently strong to purchase supplies in such quantities as to entitle them to larger discounts have adopted the practice of banding together and sending an order into the manufacturer in the name of one certain retailer, and when the goods arrive distributing same amongst the members of the club, giving each member the full benefit of the purchase. The individual druggist sending in the order collects the necessary amounts from the other members of the club, makes settlement, and the transaction is closed. In this way, members of the club are enabled not only to secure better profits for themselves, but to meet any cutting of prices. The Association prohibits this practice and has ruled that the member of a club or syndicate purchasing as above set out must collect from the other members of the club the full minimum retail price for the goods. The reason

assigned for this prohibition is that such a practice is unfair to the wholesaler.

By limiting retail druggists in this way, the great probability is that individually they will not buy from the manufacturer but will be forced to deal through the wholesaler, thus giving a benefit to the latter. Witnesses stated that quite frequently the individual druggist, assuming to make the purchase for the club, finds that when the goods arrive the other members of the club will refuse to take delivery, or very often there is difficulty in making collection. Under such circumstances, the system of club buying would work out unsatisfactorily for the retail druggist as well as for the manufacturer. However that may be, there is no question but that the P.A.T.A., by enforcing this provision, stands in the way of many retail druggists obtaining their goods at an advantageous price, and these retail druggists are, in consequence, the less able to compete with the large and financially strong retailer and with the cut-rater.

(8) ADVANTAGES OF P.A.T.A.

It is urged that the P.A.T.A. has performed a very valuable service to the drug trade by limiting the scope of the cut-rater. The evidence of increased prosperity in the drug trade is very slight. Some retail druggists claim that since the Association went into operation their sales of P.A.T.A. articles have increased. Others claim that there has been little or no change in the volume of P.A.T.A. goods now passing through their hands, whilst others, and this class is practically confined to the department store, the chain store, and the strong retail druggist, claim that there has been a decided drop in the volume of P.A.T.A. goods distributed by them. There is no question but that the P.A.T.A. has done much to stabilize business so far as nationally advertised proprietary articles on its list are concerned. The evidence also tends to show that the position of the wholesaler is improving.

The druggist who benefits mostly by the adoption of the principles of the P.A.T.A. as far as price maintenance is concerned is the man who operates a store in the smaller cities and towns and in those portions of the larger cities most removed from the large downtown stores. It is also contended that the Association aids the smaller cities, towns and country districts as against the competition of the department stores, the chain stores and the mail order houses. The operation of those large business institutions, it is argued, tends to injure the business men in the smaller centres of population, and, further, to injure, if not destroy, community life.

The evidence discloses the fact that price cutting is still rampant. Many of the best known proprietary articles are on the P.A.T.A. list and are thereby removed from the operations of the cut-rater, but there are many other proprietary articles, also of a well-known character, which are not on the Association's list. These are now being cut and the contention of some is that the cut-rate war is as severe as ever. Reading the evidence as a whole, however, one cannot but conclude that the cut-rate system has received a very severe check by the institution of the P.A.T.A.

It is strongly contended, therefore, that the P.A.T.A. constitutes the best method yet devised to curb the cut-rater and to put the wholesale and retail business in a stable and healthy condition, and some witnesses went so far as to say that if some such association as the P.A.T.A. is not put into operation the retail drug trade will in large measure die in ten years' time.

(9) OBJECTIONS TO P.A.T.A.

It is urged that the P.A.T.A. has had the effect of lessening the output of the manufacturer. This arises from the fact that the cut-rater no longer pushes the sale of these articles, and this class of merchant represents the

largest distributors of P.A.T.A. goods. It is also said that the manufacturer of P.A.T.A. articles has lost the advantage of the advertising that had been done by the large department stores and mail order houses and by the cut-rate druggists. Other manufacturers, however, claim that the trade to be encouraged and developed is that of the unit druggist, who only cuts his prices as a matter of necessity and who, when assured a reasonably fair profit, will use every effort to pass them along to the consumer.

The contention is, further, that the operation of the P.A.T.A. tends to destroy the initiative of the retail druggist, and puts him on a par with the unprogressive and careless fellow retailer.

It is further claimed that the P.A.T.A. unnecessarily interferes with the retailer's methods of disposing of his goods. Supporters of this contention claim that quite frequently they find themselves overstocked with certain lines which are slow-moving and which cannot be disposed of except by putting on special sales. The retailer is unable to so dispose of any of such articles on the P.A.T.A. list, and, as a consequence, he suffers by having to carry a comparatively dead stock. Certain witnesses also contended that, under the terms of the P.A.T.A. contract, it would be impossible for a retail druggist to dispose of goods which have become damaged or which have depreciated for some reason or other. Sir William Glyn-Jones, however, on being questioned as to this, stated that the association would be quite prepared to assist any retailer who found himself stocked with damaged and unsaleable goods, and that he felt that the manufacturer could be induced to replace the goods so damaged.

(10) PRICE MAINTENANCE AGREEMENTS

It is also contended that there are many systems of price maintenance that have worked out quite satisfactorily for the manufacturer. The Wampole Company, the Colgate Company and others have for many years adopted price maintenance agreements. They have absolutely refused to sell their branded goods to a wholesaler or retailer who would not undertake to maintain the selling price fixed by the manufacturer. Contracts such as these in Canada are unenforceable at law, but, according to the evidence, such manufacturers have found virtually no difficulty.

Many manufacturers, however, do not favour the price maintenance scheme. They are quite prepared to throw their goods on the open market and to permit the wholesaler and the retailer, when they have once purchased goods, to dispose of them as they may see fit. They claim that they have been able to carry on business successfully in this way and they say that they are quite prepared, when they find any difficulties, to adopt means to meet the situation.

(11) DEPARTMENT STORES AND MAIL ORDER HOUSES

Much has been said derogatory to the department stores and to the mail order houses. It is said that these institutions do not foster a community spirit; that the department store in many respects does not give to the public the service that is found in the ordinary retail store. The customer has ordinarily not the advantage of a charge account, cannot secure service on Sunday, and not after six o'clock on week days. It has been clearly shown, however, that the large department store and the mail order house fill a very important place in the mercantile life of Canada. Many people in remote portions of the country are able to purchase many of their requirements advantageously through the mail order houses. The turn-over in these institutions is extremely large, all pointing to the fact that they satisfactorily supply the public need. The management of

these institutions is found to be extremely good. The employees are well treated, have comparatively short hours with a goodly number of holidays, and are well remunerated for their services. They have also chances of advancement which are not available in the ordinary retail store. The public too is well served, as the goods carried are usually turned over at such frequent intervals as to insure their quality, and the delivery of the goods, with prompt adjustments in the event of misunderstandings, is of the very best.

(12) CHAIN STORES

What has been said in support of the department store and the mail order house can in a large measure be said in regard to the chain stores. Without efficiency in every department, the chain stores could not subsist.

THE THREE SECTIONS OF THE TRADE

(1) THE MANUFACTURER

It might be in order to again refer to the drug trade as a whole and deal particularly with the relative positions of the three sections of the trade, namely, manufacturer, wholesaler and retailer, always having in mind the consumer. It is pointed out above that the character of the drug trade in Canada has changed very greatly during the past thirty years. As far as proprietary articles are concerned, the large manufacturer is now the chief factor. His main object is to induce the public to make use of his products, and he must not only use the most economical way of doing that, but he must constantly keep in mind the methods adopted by the manufacturers of products similar to his own. Some years ago the ordinary system of distribution was from the manufacturer to the wholesaler and from the wholesaler to the retailer and thence to the consumer. Of recent years the manufacturer has been shifting away from this system, and we find a great many prominent manufacturers bending their efforts to sell their goods direct to the retailer. Some manufacturers, indeed, do not sell through the wholesaler at all. The manufacturer finds it necessary to get in very close touch with the retail trade. He has in mind, not only the system of sale and distribution carried on by such organizations as "Rexall," "Nadruco" and others above referred to, but he finds it most important to give as liberal terms as possible to the retail trade, enabling the druggist to satisfactorily compete with these and other forms of distribution such as are adopted by Rawleigh, Limited, and the Watkins Company, Limited. These two latter companies now have agents or travellers in all provinces of Canada. The Rawleigh Company alone is said to have in its employment some six hundred travellers. These travellers are supplied with goods by the manufacturer, and the practice of the company is to assign to each traveller a certain territory. The traveller goes from house to house within that territory, making sales and distributing the goods. There is practically no money spent on advertising, and the goods are put in the hands of the consumer usually at a figure lower than articles of similar kind found in the drug store. Some objection is taken to this latter system of distribution as undesirable from the standpoint of the consumer; it must be admitted that the travelling salesmen of such companies as the Rawleigh Company and the Watkins Company are not able to advise and protect the public in anything like the same manner as the retail druggist. The important feature from the standpoint of the manufacturer seems to be that he must ever be on the alert to meet any class of competition, and to devise any means that he may see fit on a moment's notice to meet such competition.

(2) THE WHOLESALE DRUGGIST

As intimated above, the position of the wholesaler in the drug trade has of late undergone a change. From the evidence it would seem that the financial condition of many of the wholesale drug houses is anything but satisfactory. It has not been shown that the operation of the Proprietary Articles Trade Association has up to the present time improved that condition in any material way, although it is felt that, if the association is developed and a larger number of proprietary articles placed on the list, the wholesaler would benefit considerably. Development of the practice of the manufacturer in dealing directly with the retail druggist is partly responsible for this condition of affairs, but the evidence discloses that the main cause for such condition is the keen rivalry between the wholesale houses to acquire that portion of the retail trade which still passes through the wholesale channel. Statements were filed showing that the average orders filled by a number of wholesale houses ranged from \$5.39 to \$17.11, and the average values of the individual items in said orders ranged from \$1.45 to \$3.59. One witness remarked that such a system could not be called wholesaling—that it might more correctly be termed “big retailing.” It has also been shown that the practice of the wholesale houses is not only to sell but to deliver goods in quantities as low as one-twelfth of a dozen, and in the cities to make three and four deliveries each day. It appears too that the cutting of prices has been practised in a large measure by the wholesaler, and it is said that some wholesalers have conducted their business in proprietary articles at a loss.

There is no question but that the wholesaler fills a very important place in the drug trade. He has been styled “the banking house for the small man,” and as far as concerns the retail druggist, other than those possessing large capital and having ample accommodation to carry the stock required, the wholesaler is “a necessary cog in the wheel of distribution.”

(3) THE RETAIL DRUGGIST

Dealing with the retail druggist, there does not seem to be any doubt but that price cutting proves a hardship to the druggist of small or comparatively small capital, and so situated as to be compelled to meet the competition of the cut-rate druggist. As far as this class of merchant is concerned, the Proprietary Articles Trade Association is a benefit, although even in his case we find him hampered in not being at liberty to hold out any inducement to attract the consumer when such attraction has any relation to articles on the P.A.T.A. list.

According to the evidence offered, the financial condition of the retail druggist throughout Canada is unsatisfactory. It is true that there have been very few failures, as indicated by assignments in the retail drug trade, but it is explained that this is due to the fact that, when the retail druggist finds himself in financial difficulties, the wholesaler frequently goes to his assistance, and the business is turned over to some other druggist who may feel inclined to embark in business. Forty-six retail druggists appeared before the Commission. This number included representatives of certain department stores and chain stores. It was certainly a surprise to find that the ordinary retail druggists, giving as they do not only their professional training, but very long hours and close attention to business, and after years in the conduct of business would say that their remuneration in most cases yielded but a mere subsistence.

Apart from the professional side of his business, the retail druggist performs very important service in the community. His place of business is open for possibly a longer period of time daily than that of any other line. He is looked upon as a general information bureau, and he attempts to devise divers ways and means to accommodate and meet the whims of the consumer. The

retail druggist, however, is more than a merchant. Before he is entitled to practise as a pharmacist he must take up a very intensive and costly course of study. There are also many obligations imposed upon and hazards assumed by the retail druggist in the practice of his profession. Not only must he keep in mind the provisions of the Pharmacy Act, but he must be ever alive to the provisions of such legislation as the Opium and Narcotic Drug Act, the various liquor laws, the Food and Drugs Act, and the Proprietary and Patent Medicine Act. The duty is also imposed on the retail druggist to check up prescriptions handed to him by the physician so as to make certain that no injury will result to the consumer. Truly, it may be said that the retail druggist is "a health station in every locality".

The retail druggist, whilst compelled by circumstances to develop the merchandising side of his business, cannot be fairly compared with the ordinary retail merchant who distributes proprietary articles to the public. It has been said in this connection that there is no special knowledge required to handle proprietary articles for the reason that the manufacturer in putting up his product complies with the laws pertaining to health and attaches to the article in question a copy of the formula. There can be no question but that the retail druggist is in a far better position than the ordinary retail merchant to pass over these articles to the consumer. His knowledge enables him not only to read the formula but to guide the consumer in his use of the article. It has been suggested that there are too many retail druggists in the trade in Canada. Possibly in these days, when the public has the use of railway trains, street railways and motor cars and telephones, the need of retail druggists in the residential districts is not as great as formerly.

SCOPE OF THE INQUIRY

Counsel conducting the inquiry and those representing the association dealt very largely with the law pertaining to combines and to contracts in restraint of trade. As I read the Combines Investigation Act, the commissioner is called upon to report the facts and circumstances of the organization whose operations are called in question and to make a report thereon. It is his duty to state whether or not in his opinion the organization is a combine which has operated or is likely to operate to the detriment of the public. In coming to the conclusions set out in this report, the principles of law involved have, of course, been kept in mind.

CONCLUSIONS

It is submitted that it is quite apparent from perusal of the evidence that the Proprietary Articles Trade Association is a combine within the meaning of the Combines Investigation Act, 1923. The association is one which comprises or attempts to comprise the entire trade in proprietary medicines and toilet articles of a branded character, covering such articles as are commonly carried by retail druggists and which are known to the trade and to the consuming public as nationally advertised goods. These goods have been established in public favour either by their own merits or by the advertising efforts of the manufacturer. They stand in an entirely different class from other proprietary articles which necessarily enter into competition with them. The object of the association, therefore, is to form an all-embracing body controlling nationally advertised goods and including in its make-up the manufacturer, the wholesaler and the retailer. At the present time the association does not comprise many more than one-third of the manufacturers producing such proprietary and toilet articles. I do not think that there is any doubt but that the evidence offered

has disclosed a policy on the part of the association which will force all manufacturers to take membership, or compel those who will not do so to use other than the ordinary channels of trade to dispose of their goods. Such an organization, in my opinion, cannot work out otherwise than detrimentally, not only to the consuming public, but as well to that part of the public represented by the manufacturers who do not concur.

The association contends that it does not fix the resale price; that all it attempts to do is to cause the manufacturer to give to the wholesale and retail distributors a fair and reasonable reward for the distribution of his goods. I cannot see how it can be argued that the regulation of the margin of profit which is included in the sale price of the article is not a controlling of the price of that particular article. The association readily declares that, if the manufacturer does not see fit to give to the distributor a margin of profit such as the association may think proper, his product will not be put on the P.A.T.A. list, and the consequence, as intimated above, is more than likely to prove serious for the manufacturer. In order to comply with the terms of the association in the matter of spread, the manufacturer whose hitherto fixed price has not been sufficient in the eyes of the association must advance the price to the public, or must reduce his own sale price to the wholesaler and to the retailer. In either event, the operation of the association leads to the enhancement of price to the consuming public, or to loss and detriment to the manufacturer.

The P.A.T.A. list imposes on all druggists one minimum price for each article, which price may represent an advance or may represent a reduction, according to the character of the particular business. Prior to the advent of the association, a very large part of the consuming public in Canada had been purchasing these goods at prices considerably less than those set out in the association's list. The predatory cut-rater is not by any means the dominant factor in the merchandising of proprietary articles. But in addition to curbing his activities, the association places a heavy handicap on the retailer whose lower prices represent lower operating costs. Many progressive institutions, such as the department stores, the chain stores and the retail druggist possessing considerable capital, have been able to pass their goods over the counter to the consumer at prices substantially lower than those listed by the association, and make a satisfactory profit. This system of merchandising should not be readily suppressed. It acts as a spur to the other members of the trade and gives to the consumer a chance to make a saving on the purchase of these goods. Certainly no encouragement should be given to the predatory cut-rater, but the progressive merchant who can make a profit on a mark-up less than the average retail druggist should not be lightly interfered with. The tendency in the trade is towards closer relations between the manufacturer and the retailer, and the gradual elimination of unnecessary channels or expensive methods of distribution; the development of this movement means that the retail druggist will be able to pass the goods along to the consumer at a reduced price and yet obtain for himself his due reward. The P.A.T.A. projects itself between the retailer and the consumer, and by the instrument of the stop-list compels the retailer to demand from the consumer a price that the latter would otherwise not be required to pay. To endorse such an association would, in my view, be a retrograde step.

Reverting again to the matter of the margin of profit, it is quite apparent that, if the Association is allowed to continue and to develop as it hopes, the prices of proprietary and toilet articles within the class above mentioned will be materially increased. For the purpose of meeting conditions due to price cutting, the Association permits certain articles that have been cut to be sold to the wholesaler at a margin of profit to the latter somewhat less than 16 $\frac{2}{3}$ per cent, and to the retailer at a margin of profit somewhat less than 33 $\frac{1}{3}$ per cent. As far as new articles going on the market are concerned, the aim of the

Association is to require the manufacturer to allow a margin of profit of $16\frac{2}{3}$ per cent on sales to the wholesaler, and $33\frac{1}{3}$ per cent on sales to the retailer. It seems to me that the only conclusion is that there will be an advance in the price of articles which have been cut and which have been sold to the consuming public at margins which many distributors have regarded as reasonable. The manufacturer placing new articles on the market and listing the same with the Association must give the distributor a profit which will be fixed at the limit that the Association can go; this will undoubtedly add to the difficulties of such a manufacturer, and will certainly mean an unreasonable enhancement of price to the consumer.

The restrictions of the Association in regard to club buying and the handling of P.A.T.A. goods by the methods ordinarily adopted by the retailers' co-operative companies are imposed solely for the benefit of the wholesaler. In my view this is not a reasonable regulation for the protection of the trade. It is an unnecessary interference with the retailer. The restrictions imposed on the co-operative societies will impede or destroy the co-operative movement, which in the opinion of many is vital to the interests of a large portion of the population of the western provinces. These provisions, compulsorily supported by the combined influence of the trade, will give to the wholesaler or retailer an unearned reward, and will destroy systems of distribution which are designed to reduce the price to the consumer.

For the reasons above mentioned, and having in mind that persons engaged in the trade may legally organize for their mutual protection and advancement (so long as the interests of the public are not unduly impaired), I am thoroughly convinced that the P.A.T.A., all-embracing as it is, or as it is designed to be, in its control of the entire trade in nationally advertised proprietary medicines and toilet articles, is an organization which has operated and is likely to operate to the detriment of and against the interest of the public.

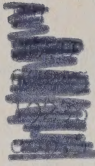
All of which is respectfully submitted.


L. V. O'CONNOR,

Commissioner.

HB-26-10-65

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